

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND	)	DOCKET TG-091127
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	ORDER 02
v.	)	
	)	
WASTE MANAGEMENT OF	)	
WASHINGTON, INC., d/b/a WASTE	)	
MANAGEMENT OF GREATER	)	INITIAL ORDER GRANTING, IN
WENATCHEE,	)	PART, MITIGATION OF PENALTY
	)	ASSESSMENT
Respondent.	)	
	)	
.....	)	

**BACKGROUND**

- 1     ***Synopsis.** This is an Administrative Law Judge's Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this Order. If this Initial Order becomes final, the request for mitigation of the penalties proposed to be assessed against Waste Management will be granted, in part. A penalty of \$16,103.50 will be assessed against Waste Management for billing improper rates and charges to customers.*
  
- 2     **NATURE OF PROCEEDING.** On October 20, 2009, the Washington Utilities and Transportation Commission (Commission) filed a complaint against Waste Management of Washington, Inc., d/b/a Waste Management of Greater Wenatchee (Waste Management or Company when referring to the state-wide corporation and WM Wenatchee and WM Ellensburg when referring to the specific operating division) for billing improper charges to its customers. In the complaint, the Commission sought \$64,140 in penalties. On the same date, the Commission scheduled a prehearing conference for November 9, 2009. During the prehearing conference, the parties expressed an interest in attempting to mediate this dispute.

3 By Order 01, Prehearing Conference Order, dated November 12, 2009, the  
Commission acknowledged its support of the alternative dispute resolution process,  
assigned Administrative Law Judge Adam Torem to serve as mediator, and scheduled  
a mediation session in this case. In the event the mediation process was unsuccessful,  
the parties concurred that this matter could be heard on a paper record. Accordingly,  
Order 01 also established a briefing schedule.

4 The mediation process did not resolve the parties' dispute. Therefore, on December  
2, 2009, Waste Management filed its hearing brief. The Commission's regulatory  
staff (Commission Staff or Staff)<sup>1</sup> filed its responsive brief on December 16, 2009,  
and Waste Management filed its reply brief on December 23, 2009.<sup>2</sup>

5 **PARTY REPRESENTATIVES.** Polly L. McNeill, Summit Law Group, Seattle,  
Washington, represents Waste Management. Jennifer Cameron-Rulkowski, Assistant  
Attorney General, Olympia, Washington, represents the Commission's regulatory  
staff (Commission Staff or Staff).

6 **FACTUAL BACKGROUND.** The underlying facts are not in dispute. In December  
2008, Waste Management moved its customer call center from Kirkland to Oak  
Harbor. The customer call center handles customer inquiries for all of Waste  
Management's operations in Washington. The operating divisions of WM Wenatchee  
and WM Ellensburg serve regulated and city contract customers in Douglas, Chelan,  
Kittitas, and Grant counties. A customer service representative (CSR) addressing a  
billing inquiry depends on computer data for each city contract and Commission tariff  
regarding rates, service levels, and optional charges.

7 At the same time Waste Management moved the call center to Oak Harbor, a number  
of other system improvements were implemented including consolidating the  
computer data for WM Wenatchee and WM Ellensburg with the Company's Spokane  
operations. When the data were moved, certain computer links were dropped that

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<sup>1</sup> In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioner, the presiding administrative law judge, and the Commissioner's policy and accounting advisors do not discuss the merits of the proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

<sup>2</sup> All briefs were timely filed.

created billing errors for WM Wenatchee and WM Ellensburg commercial customers. February and March 2009 bills sent to regulated customers served by these operations included an “environmental and fuel surcharge” that is not in the Commission-approved tariffs for WM Wenatchee and WM Ellensburg.

- 8 In March 2009, most of the CSRs in the Oak Harbor call center were new employees. On March 17, 2009, a customer called to complain about the surcharge. The CSR told the customer the surcharge was correct and that she should call the Commission for further assistance. On the same date, the customer called the Commission and Commission Staff emailed the complaint to the District Manager named on the title page of WM Wenatchee’s tariff. That individual no longer worked for the Company.
- 9 Having received no reply from the District Manager, Staff called the District Manager on March 25, 2009. A message was forwarded to the Operations Manager who returned Staff’s call the same day. On March 27, 2009, the deadline to respond to Staff’s email, the Operations Manager sent Staff a message that he had been unsuccessfully trying to reach the complainant but that he had discovered a clerical error in the billing. The Operations Manager acknowledged that the customer should not have been billed the surcharge and that the customer’s account had been appropriately credited. In response, Staff requested the amount of credit and whether other customers had been affected by the error. The Operations Manager responded that the credit was \$2.20, other customers were affected by the error, and the Company was working diligently to rectify the issue. Later the same day, the Operations Manager notified Commission Staff that he had been able to reach the customer and explain the situation.
- 10 On April 9, 2009, Staff emailed the Operations Manager and inquired if the surcharge was only billed one month and inquired about the number of customers affected by the billing error. While it does not appear that the Operations Manager responded to Staff’s inquiry, on April 30, 2009, Waste Management posted credits to each commercial customer who was erroneously billed the surcharge for January and February services.
- 11 On May 28, 2009, Staff inquired again if other customers were billed the surcharge, if those customers had also received a credit, and requested that the Operations Manager contact Staff with the requested information. On the same day, the Operations

Manager responded that he had waited until all customers were credited and the issue had been resolved so that he could reply to Staff with correct information. On May 29, 2009, Staff learned that the Company had credited a total of \$132,201.10 in improper charges to its customers.

- 12 Staff requested additional information about the billing error; the number of customers billed the surcharge and the actual amount they were credited. The Operations Manager supplied the information in an Excel spreadsheet. Staff had difficulty interpreting this data, so on June 8, 2009, WM of Wenatchee summarized the impact of its billing mistake and reported that 3,213 customers were erroneously charged in February 2009 (for January services) and 3,201 customers were erroneously charged in March 2009 (for February services).
- 13 On July 7, 2009, Staff sent a letter to Waste Management inviting it to discuss Staff's proposed penalty of \$64,414 for the error. Waste Management's counsel promptly contacted Staff and attempted to arrange a meeting. No meeting was held. On October 20, 2009, the Commission filed a complaint against the Company for improperly billing rates and charges to customers and sought a penalty of \$64,414.
- 14 **BRIEFING.** Waste Management argues that once it learned of the billing error it immediately took steps to correct the over-charges and ensure that the mistake was not repeated. The Company had to individually calculate the effect of the over-charges given the different tax rates in Wenatchee and Ellensburg and then it was able to issue credits. It issued credits as soon as possible and then took action to correct the information in the database.
- 15 The Company has a Quality Assurance and Quality Control process whereby each time a tariff rate changes, a new tax is enacted, or a new service implemented, the data is entered by one person and checked by another. CSRs at the new Oak Harbor call center receive regular training and the Company now requires CSRs to forward all complaints regarding a regulated service to a higher level representative. Only then is a customer directed to the Commission.
- 16 The Company has implemented a procedure to ensure appropriate and consistent responses to Staff inquiries. Instead of having multiple District Managers as the initial point of contact, Waste Management has assigned a single upper management

level employee to respond to Staff. The Senior Pricing Manager of Waste Management of Washington filed revised tariff pages effective August 1, 2009, naming himself the contact person for regulated operations.

- 17 Effective with the December 2009 billing, the Company proposed a billing checklist that requires that all tax and surcharge links be reviewed prior to processing each billing cycle. Thus the accuracy of data will be cross-checked when it is initially entered and before bills are issued.
- 18 The Company is also considering developing a database that can be used to trend revenue by service code for each billing. While Waste Management argues that the Company's existing systems would have caught this billing error, it acknowledges that would not have occurred until after payments were received. Waste Management has a "Day Three" policy under which revenues are evaluated by the third business day of the next month. On that day, the Company could notice variations in revenue and anomalies in the surcharge revenue could have been noted even absent a customer complaint or Staff intervention.
- 19 Waste Management notes that the Commission has broad discretion to grant or deny requests for mitigation. It argues that where the respondent has a reasonable explanation for the unlawful conduct, acts quickly to correct the conduct, and implements measures to avoid repetition of the conduct, penalties are not appropriate and serve no purpose.
- 20 Based on prior reported decisions of the Commission, Waste Management argues that the Commission considers several criteria relevant to each violation. Using these criteria, the Company argues that this is a case of first impression because Waste Management cannot find other situations in which penalties were assessed for billing errors. The Company states that this was not a knowing or willing violation of the Commission's statutes and rules. Waste Management contends that the mistake was not gross or malicious; it was a computer error. Moreover, the Company argues that a single billing error does not constitute repeated violations because although multiple customers were incorrectly billed for two consecutive months, there were not repeated violations of the law. Waste Management also notes that there were no previous violations and no opportunity for corrective action to avoid the assessment of

penalties. Waste Management immediately and voluntarily took action to correct the error and to prevent similar mistakes from recurring.

- 21 Given the foregoing, Waste Management argues that Staff's decision to assess penalties is arbitrary and capricious. Staff's action does not adhere to prior practice for imposing penalties and does not meet the standards it has established for itself in determining when sanctions are appropriate. Thus, the Company argues that the Complaint should be dismissed. If not dismissed, Waste Management contends that the amount is disproportionate to the violations. The Company argues that a fine of \$1,000 for a single billing violation is more appropriate. If each customer bill must be counted separately then a fine of \$1.00 per violation, or a total of \$6,414, may be supported. The Company argues that the amount requested by Staff is egregious.
- 22 Staff argues that this case involves violations for which the Company would prefer an inconsequential or no penalty. Staff argues that a penalty is appropriate given the circumstances surrounding the violation and that the amount must be meaningful.
- 23 According to RCW 81.28.080, common carriers subject to the Commission's jurisdiction are prohibited from charging or collecting "greater or less or different compensation for transportation of . . . property . . . that the rates . . . and charges applicable to such transportation as specified in its schedules filed and in effect at the time." The Commission's rule, WAC 480-70-236, provides that "[N]o company may assess rates and charges for solid waste collection service that are higher, lower, or different from those contained in its approved tariff." The Commission is authorized to assess a penalty of up to \$1,000 for violation of any law or regulation it enforces.<sup>3</sup>
- 24 Staff argues that this case presents three core areas of concern. First is the issue of customer care. Staff notes that Waste Management is a monopoly provider of refuse collection service in its service territory. When the CSR initially informed the complaining customer that the surcharge was approved, it was necessary for the Commission to become involved in the matter. Staff states, to Waste Management's credit, that when the Company became aware of the complaint, it acted promptly to contact the customer and credit her account. However, the customer's billing concern was resolved only after the Commission became involved which reflects inadequate

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<sup>3</sup> RCW 81.04.380.

customer service by Waste Management. Staff argues that the fact that the CSR who relied on faulty data and misinformed the customer of the appropriateness of the charge was a new employee does not relieve Waste Management of the responsibility of training employees and checking its data.

- 25 Staff's second concern is the Company's lack of responsiveness to the Staff's follow-up question about the length of the improper billing and number of affected customers. Staff requested this information on April 9, 2009, and more than six weeks later, the Company had not responded. When Waste Management responded to Staff's second request on May 28, 2009, the Company reported that it had credited all improper charges. Staff argues that it can protect customers of monopoly providers only if those providers are accountable to the Commission.
- 26 Finally, Staff expresses concern about the lack of internal oversight that led to the improper billing. Staff does not assert that the Company knowingly issued incorrect bills; it is the company's lack of knowledge that it issued inaccurate bills system-wide to regulated commercial customers in its Greater Wenatchee system that is disconcerting. Staff argues that it took an alert customer to identify the error and then that customer was misinformed about the error and referred to the Commission.
- 27 After Waste Management migrated billing data for Wenatchee and Ellensburg to its Spokane operations, it apparently issued bills without checking a single one. Staff is not satisfied by the Company's claim that it would have discovered the error on its own because it is not clear when the error would have been discovered. Staff asserts that the Company's reliance on noticing revenue anomalies to identify system-wide billing errors well after the time incorrect bills have been issued and following implementation of significant system changes displays a certain nonchalance on the part of the Company toward accurate billing.
- 28 Staff disputes the Company's characterization of the mistake as a "clerical error" and argues that it was more serious than that. The mistake affected over 3,000 commercial customers throughout the Greater Wenatchee system, the Company was unaware of the error, and it could have been avoided by reasonable oversight.

- 29 Staff supports partial mitigation of the penalty but only in an amount that preserves reliance on a penalty as an enforcement tool. Staff argues that Waste Management's proposals would eviscerate the penalty and render it meaningless. Staff contends that it considers all the circumstances surrounding the violations when it evaluates the need for enforcement and notes that by the time the Commission initiates a penalty assessment, it is not uncommon for the underlying problem to have been resolved. That was the case here and Staff argues that Waste Management's prompt response to resolve the billing issues is reflected in the relatively low penalty assessment recommended by Staff. Staff's recommended penalty of \$64,414 reflects a penalty of \$10 per violation rather than the \$1,000 per violation authorized by statute.
- 30 Staff notes that it could have recommended additional penalties for violations based on Waste Management's failure to timely respond to Staff's request for information. Thus, Staff argues that its recommended penalties already reflect consideration of mitigating factors. However, based on the new information provided by the Company, Staff supports an even lower penalty. Based on the fact that Waste Management would have been able to eventually, without Commission intervention, discover and remedy the system-wide problem, Staff supports a penalty of \$48,105 which reflects a one quarter mitigation of the original assessment.<sup>4</sup>
- 31 In reply, Waste Management contests Staff's characterizations of a \$64,414 penalty as "relatively low" and a penalty of \$6,414 as "meaningless." The Company argues that even the \$48,105 penalty now proposed by Staff is excessive relative to the underlying billing mistake and unnecessary given the quick actions Waste Management took to correct the mistake. The Company argues that Staff minimizes the monetary and reputational costs of any penalty assessed against a private business.
- 32 The Company argues that the parties agree that if a penalty should be assessed, it should be relatively low. The dispute is over what "relatively low" means. Waste Management argues that penalties of \$64,414, or even \$48,105, are a lot of money. The Company notes that WM of Wenatchee's margins are restricted by tariff to approximately five percent, so additional gross revenue of almost \$1 million would be necessary to generate the funds to cover Staff's proposed \$48,105 penalty.

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<sup>4</sup> This appears to be a mathematical error. One quarter mitigation of the original assessment would reflect a penalty of \$48,310.50.



- 33 Waste Management contends that Staff offers no objective standard for its comparative assertions of the penalty. The Company argues that in the solid waste collection industry, this proceeding is practically unheard of and that Staff does not cite any recent litigation involving these companies. The Company also disputes that a penalty of \$6,414 would be “meaningless” because, for example, 55 percent of the penalties assessed by the Washington Department of Ecology in the first three quarters of 2009 were for amounts less than \$6,414. Similarly, the Washington State Department of Labor and Industries (L & I) reports that the average penalty it assesses for “serious” violations, those likely to result in serious injury or death, is \$1,200. The Company notes that even for “serious” violations, L & I adjusts penalties considering the employer’s good-faith efforts to comply with regulations, past compliance history, and number of workers exposed.
- 34 Waste Management argues that whether a penalty is meaningful depends on the goal of assessing sanctions. One objective could be to motivate corrective action and in a recent penalty proceeding, Staff asserted that “a penalty assessment is used as a tool to enforce future compliance”<sup>5</sup> and recommended a substantial mitigation of the penalty because the company took immediate steps to correct the violation. The Company argues that Staff should have taken a similar approach here.
- 35 A second objective of penalties could be for punishment. Given the fact that Waste Management instituted a number of measures to prevent this mistake from occurring in the future, the Company argues that it seems Staff’s sole objective is punitive. The Company argues that it investigated the problem, corrected the problem, and the complaint was closed on April 2, 2009. The fact that Staff pursued the details of the number of complaints demonstrates that the Staff was interested in punishing the Company.
- 36 Waste Management notes that Staff is concerned with the fact that Operations Manager failed to keep Staff informed and Staff contends that the Company ignored its accountability to the Commission. The Company argues that Staff should place greater emphasis on correcting mistakes rather than reporting violations. The

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<sup>5</sup> *In the Matter of Jorge Humberto Luna-Lopez d/b/a UR Moving Solutions*, Docket TV-091621, Order 01 entered December 1, 2009.

Company notes that while Staff acknowledges that the mistake was unintentional it finds it “distinctly disconcerting” that the Company had no knowledge of its mistake. Waste Management argues that this reasoning is absurd. The Company contends that an inherent feature of a mistake is that it be made without knowledge. Waste Management argues that if it had known its billings were inaccurate and deliberately continued the billings, Staff’s criticism would be justified. The Company concludes that under Staff’s theory, an innocent mistake is worse than a deliberate one and is deserving of greater penalties. The Company reiterates its request that the Complaint be dismissed or the penalty reduced to \$6,414.

### DISCUSSION AND DECISION

- 37 Both parties acknowledge that the billing error occurred and focus on the level of penalty, if any, that the Commission should assess against the Company for the violation of applicable statutes and rules. Accordingly, the issue presented is whether mitigation of the penalty is appropriate given the undisputed facts.
- 38 At issue in this case are violations of the Commission’s statutes and rules that require regulated companies to provide service in accordance with Commission-approved tariffs. Unlike criminal statutes, these statutes and rules do not contain a *mens rea* element or a requirement both that the act occurred and that the act was performed by a person with the requisite mental element such as “knowingly,” “intentionally,” or “willfully.” Rather, the applicable statutes and rules are more akin to strict liability statutes that do not require a subjective mental element. In the context of Commission proceedings, mental elements are considered to determine whether the measure of penalties should be increased. That argument is not presented here, so whether Waste Management knowingly, intentionally, or willfully committed the violations will not be considered.
- 39 The first issue is whether any penalty should be imposed. In December 2008, the Company moved its customer call center to Oak Harbor and modified its database to consolidate WM Wenatchee and WM Ellensburg into its Spokane operations. In doing so, certain data were dropped from the database that CSRs use to address billing inquiries. To compound the problem, the majority of CSRs in the new Oak Harbor call center were inexperienced. While the Company certainly has the prerogative to determine the location of its call center and to modify its computer

systems, it has the obligation to make these changes in a manner that does not adversely affect the customers it serves. It failed to do so.

- 40 In this case, it appears a problem arose in the first month after the Company moved its call center and modified its database. The new database appears to have been used not only to respond to customer inquiries regarding billing but to actually generate the bills submitted to customers. It is apparent that the new database was not adequately tested to ensure accuracy before it was used to generate billings for service rendered in January and February 2009 and was used to respond to customer inquiries. Moreover, the new CSRs do not appear to have been adequately trained before they were entrusted with the important task of responding to customer inquiries. Waste Management is responsible for the content of its database and the actions of the CSRs who act as agents for the Company. Accordingly, Waste Management's request to dismiss the complaint is denied. Given these facts, it is appropriate to assess penalties for violations of RCW 81.28.080, and WAC 480-70-236.
- 41 This leads to the primary issue in this case; the appropriate amount of penalty to be assessed. The parties present widely divergent positions on this issue. Waste Management argues for a penalty of less than \$6,414 while Staff argues for a penalty of \$48,105.<sup>6</sup> The Commission will focus on Staff's primary concerns regarding the Company's actions to determine an appropriate level of penalty.
- 42 Staff expresses concern with inadequate customer service, failure to keep Staff informed, and lack of internal oversight. With respect to customer service, Staff notes that when the customer received misinformation from the CSR, it was necessary for the Commission to become involved and assist the customer. Waste Management argues that even absent Staff intervention, it would have discovered the problem. Neither position is persuasive. Staff does not present any information to demonstrate that this situation is distinguishable from the numerous customer complaints Staff addresses on a daily basis. The Commission Staff routinely investigates complaints where consumers allege wrongdoing and regulated companies deny the allegations. After investigation, Staff resolves the complaint in accordance with applicable statutes, rules, and tariff provisions. Thus, the mere fact that Commission involvement is necessary to resolve a dispute is not cause to assess penalties.

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<sup>6</sup> It appears that the penalty Staff seeks would actually be \$48,310.50. See n. 4.

- 43 On the other hand, the Commission is not persuaded that the Company would have discovered the error either on its own or within a reasonable time frame. The Company's argument might have merit if only one billing cycle were involved. That is not the case. According to the Company's "Day Three" policy, revenues are evaluated by the third business day of the next month. In this case, that policy failed. Over 3,000 customers were billed in February for service rendered in January. Had the policy been effective, Waste Management would have been on notice that there was a problem with the February billings by the third business day of March. The Company was not alerted to the problem and more than 3,000 customers were billed in March for service rendered in February. The customer complaint arose in mid-March and it is unclear if the genesis of that complaint was the February or March billing, but it seems reasonable to conclude that the billing at issue was the February billing for which payment was due in March. According to Waste Management, its internal policy did not reflect anomalies in billing until April.
- 44 With respect to the Company's failure to keep Staff informed, Staff argues that more than six weeks expired before Waste Management responded to its request for information and the Company argues that it was focused on resolving the problem. It appears that both parties contributed to the obvious breakdown in communication. Staff's claim that the Company was nonresponsive does not explain Staff's own inaction. When the initial complaint was initiated on March 17, 2009, Staff waited approximately one week, or until March 25, 2009, to initiate a second contact with the Company. No explanation is offered as to why the Staff waited six weeks in the second instance to reiterate its request for information. There is no "magic" amount of time that Staff should wait for a response before repeating a request and the length of time Staff waited to reiterate its request would not be notable if Staff had not complained of the Company's lack of responsiveness.
- 45 Conversely, the Company argues that it was focusing on identifying the scope of the incorrect billing and correcting the billing inaccuracy. No one could fault Waste Management for working diligently to determine the number of affected customers and calculate the level of refunds due. According to Waste Management, correction of the error involved researching more than 3,000 individual commercial customer accounts for two months, in two different service territories and then calculating the

effect of the billing error on two different tax rates. However, it is highly unlikely that the Operations Manager was personally charged with this endeavor. It is more likely that experienced billing staff performed the necessary research and recalculation. Even assuming, *arguendo*, that the Operations Manager undertook the individual billing recalculation, it is not reasonable to assume that during the span of six weeks, he never had the opportunity to call or send a brief email to, at a minimum, inform Staff that Waste Management did not yet have all the information requested by Staff. In summary, working to correct the billing error is not a reasonable explanation for Waste Management's nonresponsiveness to the Staff's inquiry.

46 Finally, Staff argues that the Company lacked internal oversight or the billing problem would not have arisen. Staff finds the lack of knowledge is distinctly disconcerting because the Company had no idea that it had issued inaccurate bills system-wide. Waste Management contends that Staff's argument is absurd and that if it had knowledge of the error, Staff's concern would be justified.

47 The lack of internal oversight, not knowledge, is disconcerting. Waste Management undertook relocating its customer call center, modifying its database, and training new employees without adequately testing these products and processes to ensure seamless and transparent service for WM Wenatchee and WM Ellensburg customers. It is apparent from the numerous new procedures implemented by the Company to prevent future errors that this transition required significantly more safeguards than those originally implemented. While Waste Management appropriately instituted new procedures, it is apparent that the safeguards were not implemented in a timely manner. Those safeguards should have been instituted before more than 3,000 customers were billed improper charges for two consecutive months. The preventive measures Waste Management instituted are designed to ensure that the violations do not recur, but they do not reduce the seriousness of the violations at issue.

48 Waste Management attempts to minimize the impact of the violations by characterizing them as a "single billing error." The violations were not a single billing error. The Company issued incorrect billings for two consecutive months. More than 3,000 customers were affected by each incorrect billing. According to RCW 81.04.380, each violation is considered a separate and distinct offense and each violation is subject to penalties. In this case, 6,414 incorrect bills were issued by the

Company. Each bill issued in violation of the Commission-approved tariffs is a separate offense. The magnitude of the customer impact of this error is demonstrated by the fact that Waste Management over-collected \$132,201.10. It is difficult to categorize that level of revenue over-collection as *de minimis*.

- 49 In this case, the Commission will determine an appropriate penalty after considering the seriousness of the violations and the steps undertaken by the Company to ensure future compliance in light of two recent Commission decisions. In a proceeding involving violations of the Commission's rules on advertising, Staff initially recommended a penalty of \$3,100 for 32 violations of the Commission's rules.<sup>7</sup> After considering the company's good faith efforts to correct its errors and comply with the Commission's rules, the Commission accepted Staff's recommendation and assessed a penalty of \$400 and suspended the remainder for a period of one year provided the company remained in compliance for that time period.<sup>8</sup>
- 50 In another recent proceeding, the Staff initially sought a penalty of \$20,500 for violations of the Commission rules involving handling customer complaints.<sup>9</sup> Because the companies took steps to rectify the problems prior to receiving notification of Staff's investigation, Staff recommended that the total penalty be reduced by 50 percent, or to \$10,250. Despite the fact that many of these complaints were service-affecting, complaints were not resolved in a timely manner, and there was a pattern of noncompliance for approximately one year, the Commission imposed a penalty of \$10,250, subject to the condition that the remaining penalty of \$10,250 be suspended for a period of one year to ensure future compliance.
- 51 In this case, while the violations were serious, they were not service-affecting. The Company acted promptly to remedy the error by crediting customers the amount erroneously billed. In addition, the Company voluntarily undertook extensive

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<sup>7</sup> Order 01, entered December 1, 2009. For a complete citation, *see* n. 5.

<sup>8</sup> The penalty assessment is approximately 12 percent of the initial penalty sought.

<sup>9</sup> *In the Matter of the Penalty Assessment Against CORDIA COMMUNICATIONS CORP., in the Amount of \$2,700*, Docket No. 090440 (*Consolidated*), and *In the Matter of the Penalty Assessment Against NORTHSTAR TELECOM, INC., in the Amount of \$18,000*, Docket No. UT-090441 (*Consolidated*), Order 02, entered June 19, 2009. After dismissing two violations, the total penalty assessment sought was \$20,500, not \$20,700.

corrective measures to ensure that the billing error would not be repeated. Waste Management does not have a history of noncompliance with the Commission's rules. The incidents at issue in this case, while regrettable, appear to be isolated incidents occurring over a two-month period. Accordingly, it would be reasonable to mitigate 75 percent of the penalty and impose a penalty of \$16,103.50, subject to the condition that the remaining penalty of \$48,310.50 be suspended for a period of one year to ensure future compliance with the Commission's rules. If Waste Management fails to fully comply with the Commission's rules for a period of one year from the date of this Order, the remaining penalty of \$48,310.50 may be imposed.

52 The penalty of \$16,103.50 may be difficult for Waste Management to discharge in a single payment. Accordingly, the Commission affords Waste Management the option of discharging the penalty either in a lump sum of \$16,103.50 due and payable on February 24, 2010, or in two equal monthly installments of \$8,051.75 each due and payable on February 24, 2010, and March 26, 2010. Failure to render payment in a timely manner may also result in imposition of the suspended penalty.

53 It is so ordered.

Dated at Olympia, Washington, and effective January 26, 2010.

**WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION**

**PATRICIA CLARK**  
Administrative Law Judge

**NOTICE TO THE PARTIES**

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the order to become final before the

time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition To Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition To Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion. You will be notified if this order becomes final.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An original and eight copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250